

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERNESTO PORTILLO-PERAZA, a/k/a
MIGUEL PEREZ, a/k/a WALTER
LOPEZ,

Defendant - Appellant.

No. 04-50426

D.C. No. CR-04-00065-GHK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Ernesto Portillo Peraza appeals from his sentence imposed following his guilty plea conviction for being an illegal alien found in the United States

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

following deportation, in violation of 8 U.S.C. § 1326 (a), (b)(2). Because Portillo-Peraza was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

REMANDED.¹

1. On remand, the district court should also correct the judgment to exclude the reference to 8 U.S.C. § 1326(b)(2). See *United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir.2000).